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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,136	09/30/2003	Henrik Ovesen	900.43156X00	3836

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EXAMINER

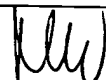
PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/673,136	Applicant(s) OVESEN ET AL.	
	Examiner David J Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9-30-03</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 9-30-03 into the application file is acknowledged.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d); which papers have been placed of record in the file.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The specification to which the oath or declaration is directed has not been adequately identified. See MPEP § 602.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because on line 15 of page 10 of applicant's disclosure "(Fig. 1)" should be deleted and further the abstract includes legal phraseology in particular the term "means" in lines 5 and 9 on page 10 and "said" in line 10 of page 10.

Correction is required. See MPEP § 608.01(b).

Claim Objections

5. Claim 8 is objected to because of the following informalities: on line 1 the term "the" should be - -a- -. Appropriate correction is required.

Claim 8 is objected to because of the following informalities: on line 4 "comprising" should be - -and- -. Appropriate correction is required.

Claims 16-23 are objected to because of the following informalities: on line 3 of each of claims 16-23 "comprising" should be - -and- -. Appropriate correction is required.

Claim Rejections - 35 USC § 102

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,487,699 to Tyrrell et al.

Referring to claim 8, Tyrell et al. discloses a method for gas stunning of animals for slaughter arriving at the slaughterhouse in transport crates – at 22, where gas stunning of the animals is achieved while the animals are still in the transport crates – see figure 1, and where the transport crates and the animals are conveyed successively by means of conveyors – at 20,24,28,34, through a stunning chamber – at 10, wherein an influence of the gas for stunning the animals is adjusted by shortening or prolonging a conveying time and/or conveying route of the transport crates – at 22 through the stunning chamber – at 10 – see for example figure 1 where the conveying route is modified at conveyor – 24 and column 3 lines 35-67 and column 4 lines 1-33 where the conveyor speed is intermittent and thus adjustable.

Referring to claim 9, Tyrell et al. discloses adjustment of the conveying time through the stunning chamber is achieved by increasing or reducing a speed of the conveyors – see for example column 3 lines 35-67 and column 4 lines 1-33.

Referring to claims 10-11, Tyrell et al. discloses adjustment of the conveying route through the stunning chamber is achieved by lowering or lifting a substantially horizontal conveyor – at 24, wherein the conveyor provides for the conveying of the transport crates

between a downwards running conveyor – at 23,26, and an upwards running conveyor – at 31-32
– see for example figure 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrell et al. as applied to claims 8-11 above, and further in view of WO Patent No. 94/27425 to Jull et al.

Referring to claims 12-15, Tyrell et al. does not disclose an influence of the gas for stunning the animals is adjusted by varying the gas concentration at varying levels in the stunning chamber as increasing gas concentration is applied in a downwards direction in the stunning chamber. Jull et al. does disclose an influence of the gas for stunning the animals is adjusted by varying the gas concentration at varying levels in the stunning chamber – at 40 or 106, as increasing gas concentration is applied in a downwards direction in the stunning chamber – see for example pages 13-14. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Tyrell et al. and add the stunning chamber with varying gas levels of Jull et al., so as to reduce the loss of gas from the stunning chamber.

Claims 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrell et al. or Tyrell et al. as modified by Jull et al. as applied to claims 8-15 above.

Referring to claims 16-23, Tyrell et al. and Tyrell et al. as modified by Jull et al. further disclose a substantially horizontal conveyor – at 24, which receives and introduces the transport crates – at 22, and animals for slaughter into a gas filled stunning chamber – at 10 – see figure 1 of Tyrell et al., in which a downwards running conveyor – at 23,26, is arranged for successively conveying transport crates downwards in the stunning chamber and an upwards running conveyor – at 31,32, which arranged for successively conveying the transport crates upwards out of the stunning chamber – see for example figure 1 of Tyrell et al., wherein the downwards running conveyor comprises substantially vertical conveyors – at 23, which support the opposite sides of the transport crates – at 22, for downwards conveying of the transport crates in the stunning chamber – see for example figure 1 of Tyrell et al., the upwards running conveyor – at 31,32, comprises a substantially vertical conveyor comprising mutually interacting endless chain conveyors which support opposite sides of the transport crates – at 22, for upwards conveying from the stunning chamber – see for example figure 1 and column 4 lines 1-15 of Tyrell et al., and between the downwards and upwards running conveyors there is a substantially horizontal conveyor – at 24,28,34, which provides horizontal conveying of the transport crates – at 22, through the stunning chamber, which horizontal conveyor further is lifted and lowered respectively between levels with varying gas concentrations in the stunning chamber – see for example – at 24 in figure 1 of Tyrell et al. Tyrell et al. and Tyrell et al. as modified by Jull et al. further discloses the downwards conveyor is an electric conveyor – see column 3 lines 60-67 of Tyrell et al. Tyrell et al. and Tyrell et al. as modified by Jull et al. do not disclose the upwards conveyor comprises mutually interacting endless chain conveyors, however it would have been obvious to one of ordinary skill in the art to take the device of Tyrell et al. or Tyrell et al. as

modified by Jull et al. and add the upwards conveyor comprising chain conveyors, so as to facilitate lifting of the transport crates. The use of chains for conveying means is well known in the butchering/slaughtering art and therefore it would have been obvious to one of ordinary skill in the art to take the electric conveyor of Tyrell et al. and make it a chain conveyor.

Claims 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrell et al. as modified by Jull et al. as applied to claims 16-23 above, and further in view of U.S. Patent No. 5,788,564 to Chamberlain.

Referring to claims 24-31, Tyrell et al. as modified by Jull et al. further discloses the stunning chamber is divided into a lower zone, an intermediate zone and an upper zone – see figure 6 of Jull et al. Tyrell et al. as modified by Jull et al. does not disclose sensors provide for monitoring and control respectively of the gas concentration in the zones. Chamberlain does disclose sensors – at 40, provide for monitoring and control respectively of the gas concentration in the zones – see for example column 3 lines 18-40. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Tyrell et al. as modified by Jull et al. and add the sensors to monitor the gas concentration of Chamberlain, so as to automatically maintain the proper level of gas inside the stunning chamber. Tyrell et al. as modified by Jull et al. and Chamberlain does not disclose the gas concentration of the lower zone is 45-51%, the gas concentration of the intermediate zone is 32-46% and the gas concentration of the upper zone is 8-10%, however the gas concentration levels are values determined via experimentation and it appears that the device of Tyrell et al. as modified by Jull et al. and Chamberlain would perform equally as well with the gas levels of the lower zone being 45-51%, of the intermediate zone being 32-46% and the upper zone being 8-10%. Further, as seen in paragraph [0015] in

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applicant's disclosure the level of gas concentration in the stunning chamber has very little effect on the effectiveness of the claimed invention and therefore the gas concentration levels are not a critical part of the invention.

Claims 32-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrell et al. as modified by Jull et al. as applied to claims 16-23 above, and further in view of U.S. Patent No. 5,902,177 to Tessier et al.

Referring to claims 32-40, Tyrell et al. as modified by Jull et al. further discloses a control system controlling mutually dependent mechanical parameters of speed of vertical conveyors, number of transport crates in the stunning zones, a cycle of crates in the stunning zone, number of animals per crate, a speed of a slaughtering line and a speed cycle between crates in the stunning zone – see for example figure 1 and columns 3-5 of Tyrell et al. and figures 1-6 and pages 9-18 of Jull et al. Tyrell et al. as modified by Jull et al. does not disclose the control system is a PLC. Tessier et al. does disclose using a PLC controller – at 105. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Tyrell et al. as modified by Jull et al. and add the PLC controls of Tessier et al., so as to allow for the device to be automated with selected parameters being variable and programmed by the user.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to devices and methods of gas stunning animals for slaughter in general:

U.S. Pat. No. 2,526,037 to Murphy – shows gas stunning of animal

U.S. Pat. No. 2,733,477 to Murphy – shows gas stunning of animal

U.S. Pat. No. 2,737,683 to Regensburger – shows gas stunning of animal

U.S. Pat. No. 3,118,174 to Hughes – shows gas stunning of animal

U.S. Pat. No. 3,135,017 to Murphy et al. – shows gas stunning of animal

U.S. Pat. No. 3,487,497 to Jorgensen et al. – shows gas stunning of animal

U.S. Pat. No. 3,828,396 to Wernberg – shows gas stunning of animal

U.S. Pat. No. 4,888,855 to Haumann et al. – shows vertical conveyor

U.S. Pat. No. 5,186,677 to Christensen et al. – shows vertical conveyor

U.S. Pat. No. 5,643,072 to Lankhaar et al. – shows gas stunning of animal

U.S. Pat. No. 5,978,029 to Morimoto et al. – shows gas stunning of animal

U.S. Pat. No. 6,056,637 to Freeland et al. – shows gas stunning of animal

U.S. Pat. No. 6,126,534 to Jacobs et al. – shows gas stunning of animal

U.S. Pat. No. 6,135,872 to Freeland et al. – shows gas stunning of animal

U.S. Pat. No. 6,473,287 to Van Ochten et al. – shows gas stunning of animal

FR. Pat. No. 2534469 – shows gas stunning of animal

WO Pat. No. 94/15469 – shows gas stunning of animal


JP Pat. No. 63-157930 – shows gas stunning of animal


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643


JEFFREY L. GELLNER
PRIMARY EXAMINER